IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO. 2687 OF 2004

Atmaram Pandurang Jadhav ... Petitioner

Vs.

The Childfen's Aid Society
and Others ... Respondents

Mr. S.N. Deshpande for Petitioenrs.

Mr. T.R. Yadav for Respondent No. 1.

Mr. R.M. Joshi for Respondent No. 2.

CORAM : F.I. REBELLO,J.
DATED : NOVEMBER 03, 2004

P.C.

. The Petitioner is working with Respondent No. 1 as attendant. For some time he was holding additional charge of the post of Electrician. Respondent No. 1 advertised the said post in Times of India. Several applications were received amongst others from petitioner and Respondent No. 2. Pursuant to interview held, Respondent No. 2 was selected and was appointed to the post in which he continues to function. After selection and appointment of Respondent No. 2, Petitioner filed complaint before the Industrial Court invoking Items, 5, 6, 9 and 10 of Schedule IV of the Act. In the complaint in Paragraph 8 in one of the averment it was alleged that Respondent No. 1 in denying due promotion to the post of Electerician/wiremen have committed unfair labour practice under Item 5, 6, and 9 of Schedule IV of

the Act. It was his case that when he worked in temporary and permanent post of Electrician, he has obtained necessary qualifications and in these circumstances, there exists implied agreement between the Petitioner and Respondent NO. 1 to appoint Petitioner to the post. The Respondent contested the case of the Petitioner herein. Issues were framed. On 10.2.2004 petitioner sought clarification of the issues as framed. Parties led evidence. The complaint field by the Petitioner was dismissed and the complaint as filed by Respondent No. 2 was allowed. Respondent No. 2 pursuant to the order is working as wireman/instructor.

2. At the heading of this petition, on behalf of the Petitioner, their learned counsel contends that the Industrial Court committed an error apparent on the face of record in not considering that the provisions of the Industrial Employment standing Orders Act were applicable to the petitioners and more so Model Standing Orders 4(b) and 4(c). It is pointed out as the Petitioner was holding temporary charge of the permanent post of Electrician, he ought to have been confirmed in the said post. It is also contended that Item 5 was applicable. The Petitioner had brought material to show that others in the establishment who had worked temporarily in the post had been absorbed. and in so far as the petitioner was concerned, there was discrimination.

It is on this count that the impugned orders are liable to be set aside.

. In my opinion, this will not be a fit case for this court to exercise its extra ordinary jurisdiction. Firstly the Respondent No. 1 advertised the post of Electrician. The Petitioner herein did not challenge the said advertisement on the ground that he was entitled to be considered for regularisation against the said post. Apart from that the petitioner participated in the selection process. He was interviewed along with Respondent No. 2 herein and other candidates who had so applied. It was respondent No. 2 who was selected. It is only after this that the petitioner chose to file complaint. In my opinion considering the above, this does not call for exercise of the extra ordinary jurisdiction of this court.

. Apart from that assuming Clause 4(b) and 4(c) of the model Standing Orders apply, the post must be in the establishment where badli workers are employed. There are no specific averments in the petition to that effect. The learned counsel contends that this should be so inferred. It is the petitioner who had come to the court complaining of acts of unfair labour Practice. It was the duty of the petitioner in these circumstances to specifically set out the

circumstances by which Respondent No. 3 had committed act of unfair labour practice. That has not been done. For the aforesaid reasons, in my opinion, no case for interference. Petition rejected.

(F.I. REBELLO,J.)